

Message Text

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ACTION ACDA-10

INFO OCT-01 ISO-00 ACDE-00 SSO-00 NSCE-00 USIE-00 INRE-00

ERDA-05 AF-08 ARA-06 CIAE-00 DODE-00 EA-07 EUR-12

PM-04 H-02 INR-07 IO-13 L-03 NASA-01 NEA-10 NSAE-00

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TO SECSTATE WASHDC IMMEDIATE 1738

INFO AMEMBASSY BONN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY NEW DELHI

AMEMBASSY OTTAWA

AMEMBASSY THE HAGUE

AMEMBASSY ROME

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

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E.O. 11652: N/A

TAGS: PARM, CCD

SUBJECT: CCD - THIRTEENTH ENMOD WORKING GROUP MEETING, AUG. 4, 1976

REF: GENEVA 6224

1. SUMMARY: ENMOD WORKING GROUP AUG 4 DISCUSSED
ARTICLE V (INVESTIGATION COMPLAINTS PROCEDURE) AND
ANNEX ON FACT-FINDING CONSULTATIVE COMMITTEE OF EXPERTS
(CCE) WORKED OUT BY CONTACT GROUP. DISCUSSION FOCUSSED
ON "SUMMARY OF (COMMITTEE'S) FINDINGS" AND ON PROCEDURE
FOR PRODUCING IT (CONSENSUS OR OTHERWISE). REVISIONS
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SUGGESTED BY U.S. (AND SUPPORTED BY USSR) IN EFFORT TO
CLARIFY PROCESS EVOKED STRONGLY NEGATIVE REACTION FROM
NUMBER OF COUNTRIES, MOST OF WHOM THOUGHT PROPOSALS
WOULD PRECLUDE FINDING BY COMMITTEE AS A WHOLE AND

HEIGHTEN POSSIBILITY OF OBFUSCATORY INDIVIDUAL OPINIONS
ITALY ADVOCATED GIVING COMMITTEE FUNCTION, INTER ALIA,
OF INTERPRETING CONVENTION, AND WAS VIGOROUSLY OPPOSED BY
USSE AND NETHERLANDS. INFORMAL EFFORTS TO RESOLVE PROBLEMS
OF "SUMMARY OF FINDINGS" AND REFERENCE TO NO VOTING ON
SUBSTANTIVE MATTERS WILL PRECEDE FURTHER WORKING GROUP
DISCUSSION OF ARTICEL V. NEW TEXT OF ART VII BIS
(REVIEW CONFERENCES) WAS CIRCULATED ON BEHALF OF CONTACT
GROUP ON THIS SUBJECT, BUT WAS NOT DISCUSSED. END SUMMARY.

2. ENMOD WORKING GROUP AUG 4 TOOK UP ART V, INCLUDING
REVISES PARA 1 AND NEW PARA 2 ANNES (PARA 5 REFTEL).
SEVERAL DELEGATIONS SAW NEW TEXT AS CONSIDERABLE ADVANCE
OVER PREVIOUS PROPOSALS. INDIA, EGYPT, ROMANIA, BULGARIA
AND USSR ANNOUNCED AGREEMENT IN PRINICPLE, SUBJECT TO
CLARIFICATIONS ON PARTICULAR POINTS. USSR REP (LIKHACHEV)
SAID SOVIETS WERE NOT COMPLETELY PLEASED WITH EVERY ELEMENT
OF THE COMPROMISE, BUT ON PRELIMINARY BASIS, VIEWED THE
WHOLE POSITIVELY.

3. EGYPTIAN REP (EL IBRASHI) QUESTIONED CONSISTENCY IN
COMPROMISE DRAFT BETWEEN PARA 2 ("A SUMMARY OF ITS
FINDINGS") AND PARA 2 OF ANNEX ("THERE SHALL BE NO VOTING
ON MATTERS OF SUBSTANCE.") EL IBRASHI ASKED WHAT WOULD BE
THE ROLE OF THE CCE UNLESS IT GAVE ITS FINDINGS AND
CONCLUSIONS? IF CONSENSUS COULD NOT BE REACHED, WOULD
THIS MEAN THERE WOULD BE NO FINDINGS? ON THE OTHER HAND,
EL IBRASHI SAID, IF CONSENSUS ON MATTERS OF SUBSTANCE IS
TO BE A REQUIREMENT, IT WOULD BE BETTER TO STATE THIS
EXPLICITLY AND REMOVE THE REFERENCE TO VOTING. IN RESPONSE,
POLISH REP (PAC) DECLARED THAT CONSENSUS WOULD BE ONLY
WAY TO RESOLVE SUCH MATTERS AND THAT VOTING WAS OUT OF THE
QUESTION.

4. NETHERLANDS REP (VAN DER KLAAUW) STATED THAT CONTACT
GROUP HAD DETERMINED THAT ABOVE ALL THE COMMITTEE MUST BE
ALBE TO FUNCTION, AND THUS A PROVISION FOR VOTING ON
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PROCEDURAL QUESTIONS WAS NECESSARY; HOWEVER, HE SAID,
VIEWS OF EXPERTS ARE NOT SUBJECT OF DECISION-MAKING. THE
SUMMARY, VAN DER KLAAUW SAID, WOULD CERTAINLY COMBINE
SIMILAR VIEWS, BUT IT COULD NOT BE LIMITED TO THE VIEWS
OF THE MAJORITY OF EXPERTS. AGRENTINE REP (BERASATEGUI)
REGARDED COMPROMISE DRAFT SUFFICIENTLY EXPLICIT TO POINT
TOWARD CONSENSUS; HE FORSAW TENDENCY IN PRACTICEL FOR VIEWS
TO COME CLOSER DURING COMMITTEE'S WORK. USSR REP (LIKHACHEV)
EMPHASIZED THAT CCE WOULD NOT DRAW (POLITICAL/LEGAL)
CONCLUSIONS; RATHER, IT WOULD BE STRICTLY A CONSULTATIVE
BODY, AND THE DRAWING OF CONCLUSIONS WOULD BE RESERVED TO
THE EXPERTS THEMSELVES, STATES PARTIES OR THE SECURITY

COUNCIL. LIKHACHEV SAID SUMMARY OF FINDINGS PER
NEW PARA 2 WOULD HAVE TO BE ADOPTED BY CONSENSUS; IF
THIS WERE NOT SUFFICIENTLY CLEAR, HE DECLARED TEXT
COULD BE REVISED.

5. US ACTING REP (BLACK), POINTING OUT THAT CONTACT GROUP
HAD AGREED ON TEXT ON AD REFERENDUM BASIS, PROPOSED THREE
CHANGES IN CONTACT GROUP'S TEXT: (A) SUBSTITUTE SENTENCE
IN PARA 2 OF ARTICLE V: "THE COMMITTEE SHALL TRANSMIT TO
THE DEPOSITARY A SUMMARY OF THE FINDINGS MADE BY THE
EXPERTS, WHICH SHALL INCORPORATE ALL VIEWS AND INFORMATION
PRESENTED TO THE COMMITTEE DURING ITS PROCEEDINGS."
(B) IN PARA 1 OF ANNEX, DELETE THE PHRASE "PROVIDE AND
EXPERT VIEW", AND CHANGE REMAINDER TO READ "THE CONSULTATIVE
COMMITTEE OF EXPERTS SHALL UNDERTAKE TO MAKE APPROPRIATE
FINDINGS OF FACT RELEVANT TO ANY PROBLEM RAISED PURSUANT
TO PARAGRAPH 1 OF ARTICLE V OF THIS CONVENTION BY THE STATE
PARTY REQUESTING THE CONVENING OF THE COMMITTEE."
(C) REVISE FIRST PART OF PARA 5 OF ANNEX TO READ: "EACH
EXPERT SHALL HAVE THE RIGHT, THROUGH THE CHAIRMAN, TO SEEK
(INFORMATION AND ASSISTANCE) FROM STATES.....", INSTEAD
OF "THE RIGHT TO REQUIRE THE CHAIRMAN TO SEEK FROM STATES",
WHICH HAD UNDULY PEREMPTORY TONE. WE CONSIDERED THAT THIS
WOULD NOT CHANGE MEANING OF PROVISION.

6. BLACK EXPLAINED THAT MOTIVATION FOR FIRST TWO CHANGES
WAS TO REMOVE AMBIGUITY IN COMPROMISE TEXT WHICH SUGGESTED
THAT THE SUMMARY WOULD NECESSARILY STATE A UNITARY
VIEW OF THE COMMITTEE AS A WHOLE ("ITS FINDINGS",
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"AN EXPERT VIEW"). THE CHANGES WOULD MAKE CLEAR THAT
THE SUMMARY COULD REFLECT THE VIEWS OF EXPERTS AS
INDIVIDUALS OR GROUPS LESS THAT THE WHOLE COMMITTEE.
IF ALL EXPERTS HELD SAME VIEW, SUMMARY COULD OF COURSE
SO STATE. THE CHANGES WOULD ALSO RESOLVE SOME UNCERTAINTY
IN CONNECTION WITH THE SUMMARY ARISING FROM THE PROVISION
THAT THERE WOULD BE NO VOTING IN THE COMMITTEE ON MATTERS
OF SUBSTANCE, WHICH MIGHT RAISE THE QUESTION WHETHER
UNANIMOUS FINDINGS WERE REQUIRED.

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7. ALTHOUGHT USSR REP (LIKHATCHEV) FOUND PROPOSED REVISIONS ACCEPTABLE, OTHER DELS COMMENTING WERE CRITICAL. SWEDISH REP (HAMILTON) STRONGLY DISAGREED WITH PROPOSED CHANGE ON "SUMMARY OF ITS FINDINGS", AND SAID THIS WAS QUESTION OF PRINCIPLE. RESULT OF CHANGE, HE SAID, WOULD BE TO MAKE COMMITTEE'S SUMMARY OF FINDINGS ONLY A COMPIATION, "A PILE OF PAPER, WHICH, PARTICULARLY IF IT CONTAINED HIGHLY TECHNICAL MATERIAL, WOULD PRESENT A DIFFICULT TASK FOR SMALL COUNTRY TO INTERPRET. HAMILTON MAINTAINED THAT LIMITED OFFICIAL USE
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SUMMARY SHOULD BE DONE IN A READABLE WAY; CONSENSUS VIEWS, VIEWS OF A MAJORITY, VIEWS OF A MINORITY, AND SO ON COULD ALL BE CLEARLY INDICATED. HE THOUGHT PROPOSED REVISIONS WOULD BERY MUCH CHANGE MEANING OF THE TEXT, AND URGED U.S. NOT TO INSIST ON THEM.

8. NETHERLANDS REP (VAN DER DLAAUW) AGREED WITH SWEDISH COMMENTS. IN ADDITION, HE FOUND THE PHRASE "FINDINGS MADE BY THE EXPERTS" IN THE U.S. PROPOSAL SOMEWHAT AMBIGUOUS, BECAUSE IT COULD BE INTERPRETED TO REQUIRE INCLUSION OF FINDINGS OF EXPERTS NOT NOMINATED BY PARTIES WHO MIGHT BE ACTING AS ADVISORS TO THE COMMITTEE. VAN DER DLAAUW ALSO THOUGHT THIRD US PROPOSAL WOULD UNDELY WEAKEN EXPERTS' PREROGATIVE TO SEEK INFORMATION OUTSIDE THE COMMITTEE. ARGENTINE REP (BERASATEGUI) SAID US PROPOSALS WOULD PRESENT DIFFICULTIES AND AGREED WITH REMARKS MADE BY SWEDEN

AND THE NETHERLANDS. MEXICAN REP (CAMPOS-ICARDO) ALSO INDICATED AGREEMENT WITH SWEDISH VIEWS.

9. INDIAN REP (MISHRA) SAID FIRST US PROPOSAL "SEEKS TO OBERLOAD ARTICLE V WITH VETO POWER." THE NEED FOR CONSENSUS ON MATTERS OF SUBSTANCE WAS ALREADY EVIDENT FROM PARA 2 ON ANNEX; IF US PROPOSAL WERE ADOPTED, THE CCE WOULD BE DEBARRED FROM SEEKING CONSENSUS, AND REPORT COULD ONLY SUMMARIZE FINDINGS OF EXPERTS ON SEPARATE BASIS. HE SAID THAT IF INTENTION WAS TO PRECLUDE THE COMMITTEE FROM ATTEMPTING TO REACH CONSENSUS FINDINGS, AGREEING INSTEAD ONLY TO A COMPIATION OF VIEWS EXPRESSED BY THE VARIOUS EXPERTS, INDIA'S APPROVAL IN PRINCIPLE OF COMPROMISE DRAFT COULD BE WITHDRAWN. REITERATING IN REPLY THAT IF ALL EXPERTS WERE OF SAME VIEW REPORT WOULD SO STATE, BLACK SUGGESTED FURTHER CONSIDERATION OF PROVISIONS IN QUESTION.

10. ON ANOTHER TOPIC, EGYPTIAN REP (EL IBRASHI) OBSERVED THAT COMPROMISE TEXT DID NOT MENTION PROBLEM OF TREATY INTERPRETATION AND ASKED HOW THAT WOULD BE DEALTH WITH. ITALIAN REP (DI BERNARDO) ADVOCATED INSERTING WORD "INTERPRETATION" IN FIRST SENTENCE OF ARTICLE I PARA 1, SO IT WOULD READ "OR IN THE INTERPRETATION AND APPLICATION OF THE PROVISIONS OF THIS CONVENTION." HE SAID THIS WOULD EXTEND CONSULTATION PROCESS TO INTERPRETATION; RESULT WOULD LIMITED OFFICIAL USE
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NOT BE AUTHORITATIVE, BUT ADVISORY. NETHERLANDS REP (VAN DER KLAUW) SAID QUESTION OF INERPRETATION WAS A DIFFICULT ONE, WHICH BASICALLY WAS FOR CO-SPONSORS TO ANSWER. USSR REP (LIKHACHEV) STRONGLY OPPOSED ITALIAN PROPOSAL. HE CONSIDERED INTERPRETATION OF THE CONVENTION TO BE THE SOVERIEGN RIGHT OF EACH STATE PARTY WHICH IN CONCRETE CASE COULD EXPRESS THAT INTERPRETATION TO OTHER PARTIES INVOLVED VIA DIPLOMATIC CHANNELS.

1. INDIAN REP (MISHRA) RAISED QUESTION OF COMMITTEE PARTICIPATION BY REPRESENTATIVES OF INTERNATIONAL ORGANIZATIONS. INSTEAD OF ANNEX PARA 5 PROVISION FOR REQUEST BY EXPERTS OF I.O. SERVICES, MISHRA THOUGHT DEPOSITARY (UNSYG) SHOULD NOTIFY APPROPRIATE IS'S WHEN CCE WAS ORDERED CONVENED, SO THAT THEIR REPRESENTATIVES COULD BE PRESENT FROM BEGINNING OF THE SESSION. IN RESPONSE, NETHERLANDS REP ARGUED THAT "THIS POLITICAL DECISION" SHOULD BE LEFT TO THE EXPERTS REPRESENTING THE GOVERNMENTS THEMSELVES; SINCE CCE CHAIRMAN SHOULD BE COMPLETELY NEUTRAL, IT WOULD NOT BE RIGHT TO GIVE HIM THE DISCRETIONARY AUTHORITY TO CALL IN PARTICIPANTS FROM IOS. VAN DER KLAUW WOULD NOT OBJECT TO SYG NOTIFYING ALL APPROPRIATE IS THAT THE CCE WAS BEING CONVENED, BUT SAW NO REASON FOR IO REPRESENTATIVES TO ATTEND FROM THE OUTSET. AS FOR THE QUESTION OF INVITING EXPERTS FROM INTERNATIONAL

ORGANIZATIONS OF A NON-GOVERNMENTAL CHARACTER (E.G. SIPRI),
VAN DER KLAUW SAID THIS WAS AN EVEN MORE DIFFICULT PROBLEM
AND THAT SUCH A PREROGATIVE SHOULD NOT BE GIVEN TO THE SYG.

12. CANADIAN REP (SIMARD) ASKED FOR EXPLANATION OF THE
MEANING OF THE WORD "ASSISTANCE" IN PARA 4 OF ARTICLE V,
WHICH WOULD BECOME PARA 5 IF CONTACT GROUP'S COMPROMISE
TEXT IS ADOPTED. ROMANIAN REP (ENE) CRITICIZED THIS
PARAGRAPH, FINDING TWO INCONSISTENCIES: FIRST, THAT THE
PURPOSE OF THE PARAGRAPH IS TO OFFER ASSISTANCE TO THE VICTIM,
BUT SUCH ASSISTANCE IS MADE DEPENDENT ON A FINDING OF THE
SECURITY COUNCIL WHICH IS SUBJECT TO VETO; SECOND, THAT THE
PARAGRAPH CONFLICTS WITH ARTICLE 51 OF THE UN CHARTER, WHICH
SPEAKS OF "THE INHERENT RIGHT OF INDIVIDUAL OR COLLECTIVE
SELF-DEFENSE...UNTIL THE SECURITY COUNCIL HAS TAKEN MEASURES
NECESSARY TO MAINTAIN INTERNATIONAL PEACE AND SECURITY."
RESPONDING TO BOTH THE CANADIAN AND ROMANIAN REMARKS, USR
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REP (LIKHATCHEV) SAID HE WOULD INTERPRET THE WORD
"ASSISTANCE" AS MEASURES OF A MEDICAL, RESCUE, OR OTHER
HUMANITARIAN NATURE, BUT "WOULD NOT EXCLUDE OTHER MEASURES"
IN CASE OF A COUNTRY SUBJECTED TO ATTACK, AS PROVIDED FOR
IN CHAPTER 7 OF THE UN CHARTER. IN ADDITION, THE SOVIET REP
STATED, THE ENMOD CONVENTION DOES NOT PRECLUDE ASSISTANCE
BASED ON OTHER AGREEMENTS.

13. AFTER CONSIDERABLE DISCUSSION OF MINOR DRAFTING
SUGGESTIONS RAISED BY BULGARIAN REP (GRINBERG), ARGENTINE
REP SUGGESTED THAT IN VIEW OF SUBSTANTIVE DIFFERENCES
EXPRESSED DURING THE WORKING GROUP'S MEETING, INFORMAL
CONSULTATIONS SHOULD BE RESUMED. JAPANESE (OGISO)
AND INDIAN (MISHRA) REPS SUPPORTED SUGGESTION, AND THE
MEETING WAS ADJOURNED.

14. NEXT MEETING OF ENMOD WORKING GROUP SCHEDULED FOR
FRIDAY, AUGUST 6.

15. FOLLOWING COMPROMISE TEXT FOR ARTICLE VII BIS
(REVIEW CONFERENCES), CIRCULATED AT REQUEST OF GDR, WAS
TABLED BUT NOT DISCUSSED DURING AUGUST 4 WORKING GROUP
MEETING.

BEGIN TEXT:

1. FIVE YEARS AFTER THE ENTRY INTO FORCE OF THIS
CONVENTION, A CONFERENCE OF PARTIES TO THE CONVENTION
SHALL BE CONVENED BY THE DEPOSITARY IN GENEVA, SWITZERLAND,
IN ORDER TO REVIEW THE OPERATION OF THIS CONVENTION WITH

A VIEW TO ASSURING THAT THE PURPOSES AND THE PROVISIONS OF

THE CONVENTION ARE BEING REALIZED.

2. AT INTERVALS OF NOT LESS THAN FIVE YEARS THEREAFTER,
A MAJORITY OF THE PARTIES TO THE CONVENTION MAY OBTAIN, BY
SUBMITTING A PROPOSAL TO THIS EFFECT TO THE DEPOSITARY,
THE CONVENING OF A CONFERENCE WITH THE SAME OBJECTIVE.

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3. IF HOWEVER NO CONFERENCE HAS BEEN HELD WHEN
TEN YEARS HAVE ELAPSED AFTER A PREVIOUS CONFERENCE, THE
DEPOSITARY SHALL CONVENE SUCH A CONFERENCE.

END TEXT. CATTO

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TAGS: PARM, CCD
To: STATE INFO BONN
LONDON
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NEW DELHI
OTTAWA
THE HAGUE

ROME
STOCKHOLM
TOKYO

Type: TE

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